**HO FOOK KEONG & 2 ORS.**

**v.**

**BANK NEGARA MALAYSIA**

HIGH COURT, KUALA LUMPUR
DATO' WAN ADNAN BIN ISMAIL J.
[CIVIL APPEAL NO. R1-12-115-92]
28 MAY 1993

***CONTRACT: Scholarship agreement - Breach of terms of agreement - Whether plaintiff entitled to sue for damages for breach - Whether scholarship agreement ultra vires Central Bank of Malaysia Ordinance 1958 - Whether there was breach on the part of the plaintiff - Whether plaintiff entitled to claim liquidated damages.***

By an agreement in writing the plaintiff/respondent (the Bank) agreed to grant a scholarship to the first defendant/appellant to pursue a course of study leading to the award of an Honours Degree in Law at the University of Malaya. It was a term of the agreement that the first defendant, upon completion of his studies, would be required to serve with the Bank in default of which he and the sureties would be liable to pay the Bank the sum of RM70,000 by way of liquidated damages. The first defendant refused to serve the Bank and the Bank sued for damages.

On appeal, the appellants argued that the Bank was not empowered under the Central Bank of Malaysia Ordinance 1958 (the Ordinance) to grant scholarships and to enter into any scholarship agreement and that therefore the scholarship agreement was *ultra vires* the Ordinance. The appellants further contended that the scholarship agreement contravened the express provisions of s. 31(d) of the Ordinance and further that in breach of the terms of the agreement, the first appellant was not offered a post consistent with the qualification he had obtained.

**Held:**

**[1]** The power to grant scholarships in return for the promise to serve the Bank can be regarded as incidental to or consequential upon the authorized power of the Bank to employ officers and employees. The granting of scholarships and entering into scholarship agreements by the Bank are not *ultra vires* the Ordinance.

**[2]** The scholarship agreement between the appellants and the Bank was a contract under which the Bank had agreed to finance the first appellant's studies in consideration for his promise to serve the Bank after completion of his studies. There was no provision for any repayment by the appellants of the scholarship money. There was no lender/borrower relationship and as such the agreement was not caught by the provisions of s. 31(d) of the Ordinance.

**[3]** The first appellants assertion that he was not offered a post consistent with the qualification he had obtained had not been shown to be capable of extinguishing his liability under the agreement. PW1, the Penolong Pengurus Kanan of the Bank, had said that there were divisions in the Bank which required people with legal qualifications. The first appellant had not even started working with the Bank and the fact of the matter was that he was not interested in working for the Bank.

*[Appeal dismissed with costs].*

**Cases referred to:**

*Malaysia Shipyard & Engineering Sdn. Bhd. v. Bank Kerjasama Rakyat Bhd. [1985] 2 MLJ 359* ***(refd)***

*Armour v. Liverpool Corpn. [1939] 1 Ch. 422* ***(foll)***

*Bank Negara Malaysia v. Mohd. Ismail [1992] 1 MLJ 409* ***(foll)***

**Legislation referred to:**

Central Bank of Malaysia Ordinance 1958, ss. 4, 8, 15(1), 30, 31(d), 33, 42, 49

**Other sources referred to:**

**Halsbury's Laws of England**, 4th Edn., Vol. 9, para 1333

*For the appellant - Lee Min Choon; M/s. Lee Min Choon & Co.*

*For the respondent - N. Balan; M/s. Shook Lin & Bok*

**JUDGMENT**

**Wan Adnan Bin Ismail J:**

By an agreement in writing dated 21 July 1980 the respondent/plaintiff agreed to grant a scholarship to the first appellant to pursue a course of study leading to the award of an Honours Degree in Law at the University of Malaya.

Clause 1(c) of the said agreement provides:

> (c) that he will upon being required to do so by The Bank serve The Bank or any Ministry

> or body (whether corporate or incorporate) that may be so determined by The Bank **in a post consistent with the qualification obtained by The Scholar** to which he may be appointed for a period of Ten (10) years from the date of his appointment ... (emphasis is added).

It was also a term of the said agreement that if the first appellant failed to serve the Bank as required, he and the sureties would be liable to pay to the Bank the sum of RM70,000 by way of liquidated damages. The second and the third appellants are the sureties.

The first appellant completed his studies in 1984. He refused to serve the respondent.

Before me the above facts were not disputed.

The learned Counsel for the appellants argued the appeal on three grounds:

(1) The scholarship agreement is *ultra vires* the Central Bank of Malaysia Ordinance 1958.

Counsel submitted that the respondent was not empowered under the Ordinance to grant scholarships and to enter into any scholarship agreement.

The principal objects of the respondent are only those as stated in s. 4 of the Ordinance which are:

(a) to issue currency in the Federation and to keep reserves safeguarding the value of the currency;
(b) to act as a banker and a financial adviser to the Government;
(c) to promote monetary stability and a sound financial structure; and
(d) to influence the credit situation to the advantage of the Federation.

He further stated that the entering into any scholarship agreement is not one of the powers given to respondent under s. 30 of the Ordinance.

His authority for the contention is the Supreme Court case of *Malaysia Shipyard & Engineering Sdn. Bhd. v. Bank Kerjasama Rakyat Bhd.* [1985] 2 MLJ 359 In that case Salleh Abas LP (as he then was) said:

> Unlike a natural person whose position in law is that he or she can do anything unless prohibited or restricted by law, a co-operative society (of which the appellants being registered under s. 7 of the Act are one) being a statutory corporation is not allowed to do anything unless authorized by the statute under which it is incorporated.

Salleh Abas LP then quoted paragraph 1333 in 9 **Halsbury's Laws of England** 4th. Edn.

> 1333. Statutory corporation. The powers of a corporation created by statute are limited and circumscribed by the statutes which regulate it, and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect the purposes of its incorporation, or may be fairly regarded as incidental to, or consequential upon, those things which the legislature has authorized. What the statute does not expressly or impliedly authorize is to be taken to be prohibited.

Section 8 of the Ordinance establishes a Board of Directors "which shall be responsible for the policy and general administration of the affairs and business of the Bank." Section 15(1) of the Ordinance gives the Bank the power to appoint "such officers and employees as it considers to be necessary for the efficient conduct of the business of the Bank."

The respondent has to have officers and employees in order to carry out its statutory functions and in order to attain "efficient conduct of the business" the respondent must necessarily have the power to adopt any proper and necessary method of getting the officers and employees. Granting of scholarships to selected students and requiring them to serve the Bank is one necessary method of getting suitable officers for the Bank.

In my opinion the power to grant scholarships in return for the promise to serve the Bank can be regarded as incidental to or consequential upon the authorized power of the Bank to employ officers and employees.

In *Armour v. Liverpool Corpn.* [1939] 1 Ch. 422 Simonds J. said:

> On the question of *vires* a large number of authorities have been cited to me. They appear to establish that the statement of the law of *ultra vires* made by Lord Selborne LC in *Attorney-General v. Great Eastern Ry. Co.* [1985] 2 MLJ 359: "that this doctrine ought to be reasonably, and not unreasonably, understood and applied, and that whatever may fairly be regarded as incidental to, or consequential upon, those things which the Legislature has authorized ought not (unless

expressly prohibited) to be held by judicial construction, to be *ultra vires*," is equally applicable to all kinds of undertakings which are carried on by municipal or other bodies under the authority, direct or indirect, of the Legislature.

I therefore held that the granting of scholarships and entering into scholarship agreements by the respondent are not *ultra vires* the Ordinance.

(2) The Scholarship Agreement contravened the express provision of s. 31(d) of the Ordinance

Section 31(d) of the Ordinance provides as follows:

The Bank may not —

(d) except as provided in ss. 33, 42 and 49, grant unsecured advances or advances secured otherwise than as laid down in paragraphs (ff), (fff), (ffff), (k) and (l) of subsection (1) of s. 30.

I think this contention is without any merit. The scholarship agreement between the appellants and the respondent was a contract under which the respondent had agreed to finance the first appellant's studies in consideration for his promise to serve the respondent after the completion of the studies. The grant was of a scholarship and not a study loan. The characteristics of a loan are not in the scholarship agreement. There is no provision for any repayment by the appellants of the scholarship money. There is no lender/borrower relationship.

(3) The First Appellant was not offered a post consistent with the qualification he obtained.

Counsel for the appellants submitted that as the respondent did not offer to the first appellant a post consistent with his qualification, namely, a degree in Law, as stipulated in clause 1(c) of the agreement, it was the respondent which breached the agreement and therefore the first appellant was not obliged to serve the respondent. The post offered to him was "Administrative Officer". He said the respondent did not have a legal department.

PW1 (Nor Azimah bt. Abu Hanifah) is the Penolong Pengurus Kanan of the respondent. In evidence she said:

Di Bank Negara Malaysia tidak ada Jabatan Undang-Undang ketika itu.

- di Bank Negara Malaysia kami semua dipanggil sebagai pegawai pentadbiran - baik kami ini akauntan, ahli ekonomi dan sebagainya.

- Insuran, Bahagian Galakan, Penaksiran dan Jabatan Pertukaran Wang memerlukan pegawai undang-undang. Tak semestinya orang yang ada kelulusan undang-undang berkhidmat di Jabatan Undang-Undang.

PW1 further said:

Defendan Pertama boleh ditugaskan di Bahagian Pengawalan Bank, Exchange Control, jika defendan pertama mempunyai kelayakan undang-undang.

By letter dated 20 April 1984 the first appellant was asked by the respondent to appear for an interview on 25 April 1984. He did not attend. By letter dated 18 July 1984 the first appellant was asked to report for duty on 23 July 1984. Again he failed to attend. In reply to the letter dated 8 August 1984 from the respondent the first appellant said:

... saya berpendapat bahawa saya tidak mempunyai minat untuk bekerja dengan Bank. Saya ingin berkhidmat peguam pengamal di sektor swasta.

In *Bank Negara Malaysia v. Mohd. Ismail* [1992] 1 MLJ 409, Mohamed Azmi SCJ said:

His assertion that the post given to him was inconsistent with his legal qualification was also equivocal and lacking in precision having regard to the obvious fact that he knew or ought to know when he entered into the scholarship agreement that at all material times the appellants were engaged in the business of central banking and not the business of a legal firm. On completion of his law studies, the scholar was attached to "the Bank Regulations Department whose function was to administer all legislation relating to banks". The scholar construed the post as merely administrative since the appellants had not set up their own legal department. To him the post was inconsistent with his qualification. The learned Counsel for the appellants argued that whether the post was or was not consistent with his legal qualification was a subjective question. We would say that being employed for only four months after graduation, it would be presumptuous for any new law graduate to suggest that working in the regulations department of the bank was completely out of place with his first degree law qualification.

In the present case, the first appellant had not even started working with the respondent. He had not yet been assigned to any division of the Bank. Yet he was already saying the post offered was inconsistent with his qualification. The truth is (as admitted by the first appellant himself) he was not interested in working with the respondent. PW1 had said that there were divisions in the Bank which required people with legal qualifications.

I find that this ground must also fail. In the result the appeal is dismissed with costs.

**JEERAM A/L SANJIWI**

**v.**

**NATIONAL UNION OF PLANTATION WORKERS**

HIGH COURT, ALOR SETAR
DATO' K.C. VOHRAH J.
[ORIGINATING MOTION NO. 25-11-1991]
17 JUNE 1993

***ARBITRATION: Application to set aside award of arbitrators - Whether arbitrators had misconducted themselves - Whether award improperly procured - Arbitration Act 1952, s. 24(2).***

***TRADE UNIONS: Application to Court to set aside award of arbitrators - Domestic remedies available - Domestic remedies not exhausted - Whether application to Court premature.***

The respondent union rejected the nomination of the applicant for the post of Chairman of the Kedah, Perlis, Penang State Branch Committee at elections for the term 1989 to 1992. The dispute arising out of the respondent union's rejection of the applicant's nomination was referred to arbitration under r. 32 of the respondent union's rules. The applicant sought to set aside the award of the arbitrators on the grounds that the arbitrators had misconducted themselves within the meaning of s. 24(2) of the Arbitration Act 1952.

The respondent contended that the application before the Court was premature as the award made by the arbitrators was not final and said that the applicant should exhaust his domestic remedies by appealing to the Triennial Delegates' Conference in accordance with r. 32(5) of the union rules.

**Held:**

**[1]** Two questions were raised for determination by the parties and the arbitrators took cognisance of them. However the arbitrators did not at all determine the issues raised.

**[2]** It was not surprising that the arbitrators did not determine the issues as they had not come to grips with the underlying questions relating to the legal effect of the earlier arbitrator's award and the legal effect of the union rules relating to payment of subscriptions and the refusal of the respondent union to accept the fees tendered by the applicant to the respondent union's headquarters.